

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

**RE: PETITION OF TOWNS OF AQUINNAH, BARNSTABLE,
BOURNE, BREWSTER, CHATHAM, CHILMARK, DENNIS,
EASTHAM, EDGARTOWN, FALMOUTH, HARWICH, MASHPEE, OAK
BLUFFS, ORLEANS, PROVINCETOWN, SANDWICH, TISBURY, TRURO,
WELLFLEET, WEST TISBURY, AND YARMOUTH AND COUNTIES
OF BARNSTABLE AND DUKES
(acting together as the CAPE LIGHT COMPACT) DTE 00-_____ FOR
APPROVAL OF AGGREGATION PLAN**

**PETITION OF CAPE LIGHT COMPACT
SEEKING APPROVAL OF AGGREGATION PLAN
AND FORM OF ELECTRIC SUPPLY AGREEMENT**

• INTRODUCTION

- The Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County⁽¹⁾, acting together as the Cape Light Compact ("Compact"), hereby submit to the Department of Telecommunications and Energy ("Department") their Aggregation Plan and Form of Electric Supply Agreement for review and approval pursuant to G.L. c. 164, §134 ("Section 134"). This statute, included in the 1997 Electric Utility Restructuring Act, authorizes municipalities to aggregate the load of electric customers located within their borders in order to procure

competitive supplies of electricity.

- On November 25, 1996, the Barnstable County Commissioners took the first formal steps to create the Cape Light Compact, by asking each of the fifteen towns in Barnstable County to send representatives to a steering committee meeting. On March 12, 1997, the steering committee announced the effort to form of the Compact and began obtaining affirming votes from town meetings throughout Cape Cod on a Resolution authorizing the towns to participate jointly in obtaining power supply. By May, 1998, all fifteen Barnstable County towns and the county itself had signed the "Inter-Governmental Agreement of the Cape Light Compact," the Compact's governing document. See Vol. II, Tab 1. In June, 1998, Dukes County (Martha's Vineyard) and its six constituent towns also joined the Compact. The process of forming the Compact and entering into the Inter-Governmental Agreement involved meetings of each Board of Selectmen, meetings with town counsels, numerous meetings of the town and county representatives to the Compact, and public meetings. See "Informational Meetings on the Cape Light Compact and Municipal Aggregation," Vol. II, Tab 10.
- The Compact began drafting its Aggregation Plan during the spring of 1998. Prior to completing the Aggregation Plan, it consulted extensively with the Division of Energy Resources ("DOER") and the public. The Compact held numerous open meetings, and the public had the opportunity to review the plan and comment on it during a public hearing and comment period. See "Aggregation Plan Development Chronology," Vol. II, Tab 5. The Compact in May, 1999 produced a draft of the Aggregation Plan that reflected comments both of DOER and the public.
- In conjunction with developing the Aggregation Plan and its power supply program, the Compact also negotiated the Form of Electric Supply Agreement with Select Energy, Inc. ("Select" or "Supplier").
- The Compact now formally petitions the Department to review and approve its Aggregation Plan and Form of Electric Supply Agreement in accordance with Section 134.

- **OVERVIEW OF THE FILING**

- The Compact is submitting the following documents in connection with this Petition:
 - "Cape Light Compact Aggregation Plan" ("Plan")
 - "Form of Electric Supply Agreement" ("ESA")
 - "Report of the Cape Light Compact in Support of its Aggregation Plan" ("Report")

- Various exhibits and documents supporting the Plan, ESA and Report
- "Compact's Memorandum on Procedures to Review and Approve Aggregation Plan and Form of Electric Supply Agreement" ("Memorandum")

(Items a., b., and c. are included in Volume I of the filing, along with this Petition; item d. is included in Volume II of the filing. The Memorandum is filed separately).

- **REQUESTED PROCEDURES TO REVIEW THE PLAN**

- After obtaining extensive public input, the Compact is the first municipal aggregator to submit an aggregation plan and ESA-type document for formal review and approval by the Department. The governing statute, Section 134, provides limited guidance as to the procedures the Department should follow to conduct its review. In a "Memorandum" released April 24, 2000 in City of Haverhill, DTE 99-93 and City of Easthampton, DTE 99-103, the Department outlined the procedures it will follow to review the aggregation plans filed by those two cities. That Memorandum includes an expedited schedule for answering discovery and for interested parties to submit comments. In addition, the Department noted in that Memorandum that it does not intend to hold evidentiary hearings, subject to the receipt of comments and answers to discovery.
- The Compact has submitted a separate Memorandum requesting specific procedures that the Department should follow in this case. In brief, the Compact urges the Department to conduct its review expeditiously in order to allow the Compact's program to proceed on schedule and in order to avoid delays that could make it difficult for municipal aggregators to negotiate binding agreements with willing suppliers. Municipal aggregators are required by their very nature to conduct their business openly and with full participation by the public. The Compact holds regular, open public meetings at which interested citizens have had the opportunity to express their views and shape the Compact's power supply program. The Compact therefore proposes streamlined proceedings that include public hearings, discovery by Department staff, and an opportunity for interested persons to submit written comments after the conclusion of the public hearings.

- **DEVELOPMENT OF THE PLAN, SELECTION OF SUPPLIER, AND**

COMPLIANCE WITH STATUTORY REQUIREMENTS

- The Compact developed its Plan after extensive consultation with the Division of Energy Resources and after affording the public an ample opportunity to review and comment upon it, as more fully detailed in the Report, §III (Vol. I, Tab 2).
- The Compact engaged in an open and thorough Request for Proposal ("RFP") process in choosing Select as its current supplier, as more fully detailed in the Report, §IV.
- The Compact has negotiated an ESA (Vol. I, Tab 4) the content of which must be separately approved by formal vote of each member town that wishes to take advantage of the prices and terms contained in the ESA. Sixteen towns and the two counties have already voted to approve, with actual signing of the contract subject to Department approval. (Available copies of the votes are included in Vol. II, Tab 9). The five remaining towns (Bourne, Chatham, Eastham, Orleans and Wellfleet) will hold their votes at a later date. After the Department approves the Plan, the towns and counties will formally sign the ESA.
- All twenty one towns have previously approved the Plan, through their representatives on the Compact's Governing Board.
- The ESA provides prices that are lower than standard offer, for every customer class and for every year in which those prices are available. The ESA thus passes the price test in G.L. c. 164, §134(a).
- The Compact's Plan and parallel portions of the ESA include the required provisions for universal access, reliability, equitable treatment of customers, organizational structure, operations, funding, ratesetting and other costs to participants, methods for entering and terminating agreements, rights and responsibilities of participants, and terminating the program. The Plan and ESA thus meet the non-price requirements of G.L. c. 164, §134(a), ¶4.
- The Plan and ESA protect the rights of participants to receive required notices, to choose a supplier, and to opt out of the Compact's power supply program. The Plan and ESA thus meet the requirements of G.L. c. 164, §134(a), ¶¶5,6.

• RULINGS ON SPECIFIC OPERATIONAL ISSUES

A. Notification of Customers

- The Compact must notify all customers "in advance of automatic

enrollment that they are to be automatically enrolled and that they have the right to opt-out of the aggregated entity without penalty." G.L. c. 164, §134(a).

- The Compact has included a sample notification form as an attachment to its ESA (Vol I, Tab 4, Exh. A).
- The Compact can carry out its notice obligation by having its Supplier send the required notice in a separate envelope, or by including the notice in the monthly billing envelope that Commonwealth Electric Company ("Company"), the local distribution company, sends out to customers.
- The Compact estimates that it would cost \$75,000 or more to send the required notice in a separate envelope to the 185,000 customers within its territory and that it would only cost \$25,000 if the notice was included in the Company's monthly billing envelope, based on discussions it has had with Company staff.
- The Company is not willing to grant the Compact access to the envelope without an order from the Department.
- The Compact respectfully requests an order that it may include in the Company's monthly envelopes the notification to customers required by law, in order to minimize costs to consumers and for the other reasons stated in §§V and VI of its Report.

B. Treatment of New Customers

- At the present time, new customers who move into the Compact's territory are placed on the Company's default service rate, except for low-income customers who have the right to take standard offer service.
- In the near future, default service rates will be uncoupled from standard service rates and may exceed those rates by a significant margin.
- New customers will benefit financially if they are served by the Compact's designated Supplier rather than on default service.
- Even if these new customers are initially served by the Compact's Supplier, the right of new customers to choose any supplier, including default service from the Company, will be fully preserved.
- The Compact respectfully requests an order that customers who move into its service area after the initiation of service by its Supplier shall be served under its Program, unless they affirmatively opt out.

C. Waiver of Certain Information Disclosure Requirements

- The Compact or its Supplier are obliged to disclose to customers a range of information regarding prices, collective bargaining agreements, fuel

sources and air emissions, under G.L. c. 164, §1F(6) and 220 C.M.R. 11.06.

- The Compact or its Supplier can provide much of this the information required by the statute, G.L. c. 164, §1F(6), especially the information regarding the fuel sources, emissions characteristics and labor characteristics, more effectively and at lower cost by using means other than those specified in the regulation, 220 C.M.R. 11.06(4). The Compact requests a waiver, both for itself and its Supplier, of certain of the requirements of 220 C.M.R. 11.06, under the "Exceptions" authority contained in 220 C.M.R. 11.08. Specifically, the Compact asks that the Department waive the requirements of 220 C.M.R. 11.06(4)(c) that a competitive supplier provide an information disclosure label directly to retail customers on a quarterly basis.
- As an alternative to providing the quarterly information disclosure label directly to customers, the Compact respectfully requests the Department order that the Compact may provide the information regarding fuel sources, emissions and labor characteristics by alternative means. Based upon information available to it, the Compact believes that even direct mailings including this information will be ignored by a large percentage of ratepayers and that other means are as likely, if not more likely, to effectively deliver the information required by the statute and regulations. Those alternative means are detailed in the attached Report of the Cape Light Compact, Vol. I, Tab 4, §V and include press releases; public service announcements on radio and cable TV; newsletters of Councils on Aging, civic, business and religious organization; posting at town offices; meetings of Boards of Selectmen (which are televised and reported in the press); and postings on the Internet. Under the Compact's agreement with its Supplier, the Supplier must flow through a portion of any notification-related cost reductions to the Compact, which in turn distributes these savings to the member municipalities. ESA, Article 3.2 (Vol. I, Tab 4).
- The Compact is not seeking any waiver of its obligations under G.L. c. 164, §134 to provide written notice to inform all ratepayers of the automatic enrollment process, of their rights to opt-out, and of their other rights under §134. The Compact is also not seeking any waiver of the Supplier's obligations to provide written Terms of Service to each ratepayer (220 C.M.R. 11.06(3)), and to provide to all customers a toll-free number for customer service and complaints (220 C.M.R. 11.06(2)(c)). The Compact's Supplier will also provide, prior to the initiation of service, the price information required by 220 C.M.R. 11.06(2)(b).

- **PRAYERS FOR RELIEF**

- Wherefore, the Compact respectfully requests that the Department:
 - find that the Compact's Plan meets all of the requirements of G.L.

c. 164, §134 and formally approve the Plan; and

- issue the three specific operational rulings requested in Section V, above.

Respectfully submitted,

May , 2000

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1. The two named counties join in this Petition in their capacity as members of the Cape Light Compact and in support of the Compact's twenty-one member towns, all of which lie within Barnstable County and Dukes County. It is the towns, not the counties themselves, that formally aggregate the loads of electricity customers within their borders.